

## Part 2 Study on Dispute Resolution Process in Specific Cases IV. Dispute Resolution Process in Labour Disputes

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for the party who has suffered as a result of the failure on the part of the other party. However, in cases brought before the civil courts, there is the avenue of appeal should a litigant be dissatisfied with a judgment handed down by a lower court, whereas in cases brought before the Tribunal, there is no appeal procedure. The only way in which a dissatisfied claimant could have his case “re-heard” would be by way of judicial review. At present, judicial review against Tribunal decisions have yet to be entertained. Given the present small amount of value of claim or subject matter, it would not be worthwhile to have Tribunal decisions reviewed, for judicial review would bring with it the negative elements associated with civil court proceedings, such as the need to employ lawyers and the attendant high legal costs.

#### **IV. Dispute Resolution Process in Labour Disputes**

##### **A. Background to Labour and Employment Cases in Malaysia**

There are a few main statutes which regulate labour and employment in Malaysia – the Employment Act 1955; the Industrial Relations Act 1967; and the Trade Unions Act, 1959. Apart from these 3 major statutes, there are other statutes which regulate specific matters, such as the Workmen’s Compensation Act 1952, the Employees’ Social Security Act 1969, the Occupational Health and Safety Act 1994, the Factories and Machinery Act 1967, the Employees Provident Fund Act 1991, the Pensions Act 1980, and the Statutory and Local Authorities Pensions Act 1980.

Other legislation pertaining to labour and employment:

- (i) the Children and Young Persons (Employment) Act 1966
- (ii) the Employment (Restriction) Act 1968
- (iii) the Employment (Information) Act 1953
- (iv) the Sabah Labour Ordinance 1949
- (v) the Sarawak Labour Ordinance 1952
- (vi) Wages Councils Act 1947
- (vii) Human Resource Development Act 1992
- (viii) Workers’ Minimum Standards of Housing and Amenities Act 1990.

The agency with primary responsibility for labour and employment generally in Malaysia is the Ministry of Human Resources, headed by its Minister. The basic objectives of the Ministry are:

- (a) to enforce the labour standards prescribed by relevant laws and regulations;
- (b) to generate employment opportunities for citizens and to regulate the employment of non-citizens;
- (c) to equip the unemployed with basic industrial skills and to enhance the skill level of the labour force;
- (d) to register trade unions and union federations and to supervise their activities;
- (e) to foster good employer-employee relations and to promote sound industrial relations; and
- (f) to ensure the safety, health and welfare of employees.

The Ministry is organised along division and departmental lines. (See organisational chart). The divisions constitute the secretariat of the Ministry, while the departments execute its most important function, ie, the enforcement of various laws and regulations as follows:<sup>15</sup>

The *Department of Labour Peninsular Malaysia* administers the following laws and regulations made thereunder:

- (1) the Employment Act 1955 (Revised 1981);
- (2) the Children and Young Persons (Employment) Act 1966;
- (3) the Employment (Restriction) Act 1968;
- (4) the Employment (Information) Act 1953 (Revised 1975);
- (5) the Weekly Holidays Act 1950 (Revised 1977);
- (6) the Workers' Minimum Standards of Housing and Amenities Act 1990;
- (7) the Workmen's Compensation Act 1952 (Revised 1982); and
- (8) the South Indian Labour Fund Ordinance 1958.

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<sup>15</sup> Ayadurai, D., *Industrial Relations in Malaysia – Law & Practice* (2<sup>nd</sup> edn) MLJ Sdn Bhd p. 357.

The *Department of Labour Sabah* administers the following laws and the regulations made thereunder:

- (1) the Sabah Labour Ordinance 1949;
- (2) the Employment (Restriction) Act 1968;
- (3) the Employment (Information) Act 1953 (Revised 1975);
- (4) the Wages Councils Act 1947 (Revised 1977);
- (5) the Workmen's Compensation Act 1952 (Revised 1982);
- (6) the Trade Unions Act 1959 (Revised 1981); and
- (7) the Industrial Relations Act 1967 (Revised 1976).

The *Department of Labour Sarawak* administers the following laws and the regulations made thereunder:

- (1) the Sarawak Labour Ordinance 1952;
- (2) the Employment (Restriction) Act 1968;
- (3) the Employment (Information) Act 1953 (Revised 1975);
- (4) the Sarawak Weekly Holidays Ordinance 1956;
- (5) the Wages Councils Act 1947 (Revised 1977);
- (6) the Workmen's Compensation Act 1952 (Revised 1982);
- (7) the Trade Unions Act 1959 (Revised 1981); and
- (8) the Industrial Relations Act 1967 (Revised 1976).

The *Department of Trade Unions* administers only one law, viz the Trade Unions Act 1959 (Revised 1981) and the regulations made thereunder. Similarly, the *Department of Industrial Relations* also administers only one law, viz the Industrial Relations Act 1967 (Revised 1976) and the regulations made thereunder.

The *Department of Occupational Safety and Health* (formerly, the Factories and Machinery Department) administers the following laws and the regulations made thereunder;

- (1) the Occupational Safety and Health Act 1994; and
- (2) the Factories and Machinery Act 1967 (Revised 1974).

The *Department of Manpower* does not administer any law or regulation. But in line with the objective of achieving a more optimal utilisation of the nation's human resources, this department provides vocational guidance, places jobseekers, develops and upgrades industrial skills, and collects, analyses and disseminates labour market information for manpower planning purposes.

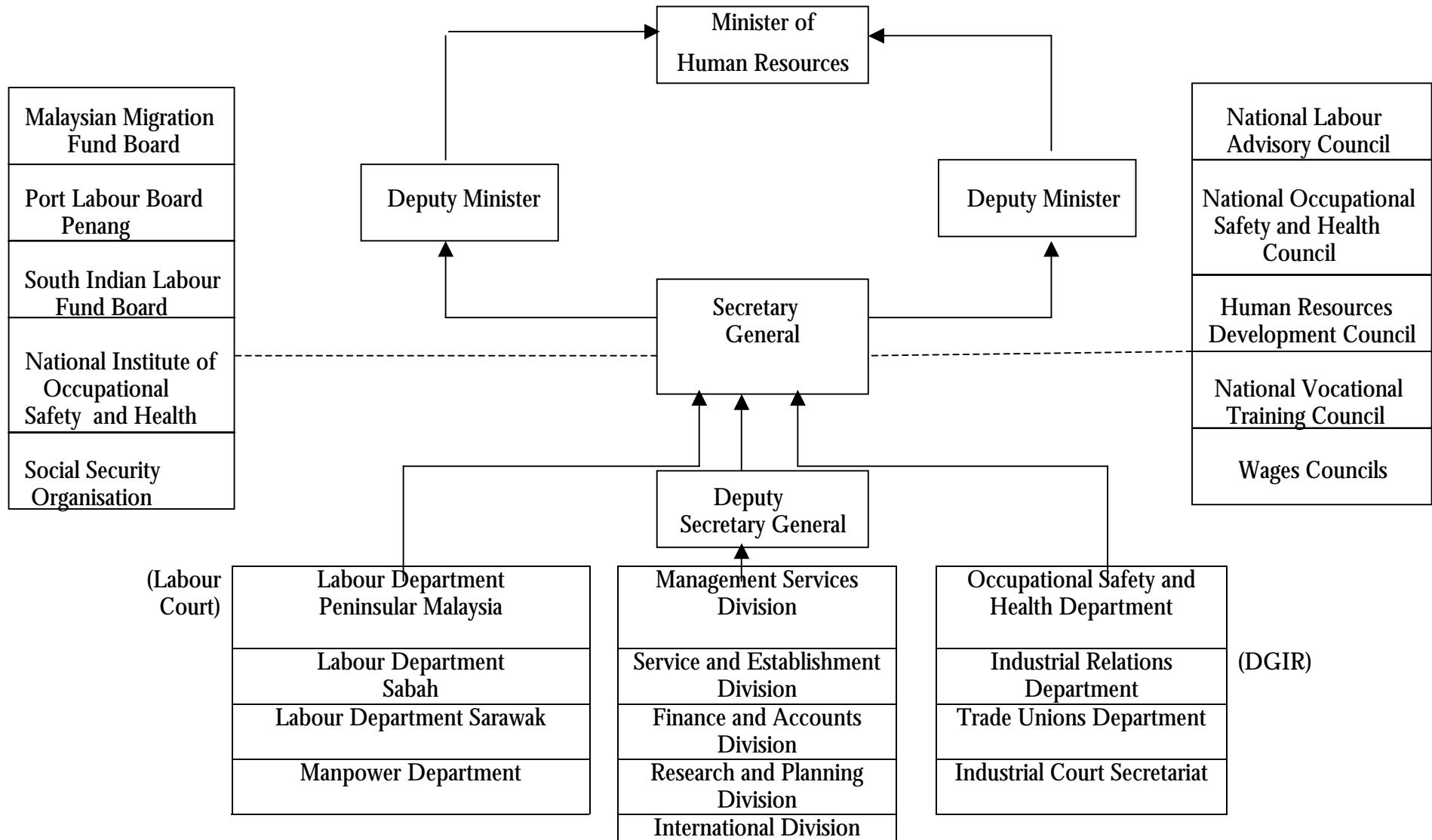
In carrying out its objectives, the Ministry is assisted by five statutory authorities, as follows:

- (1) the Malaysian Migration Fund Board;
- (2) the Penang Port Labour Board;
- (3) the South Indian Labour Fund Board;
- (4) the National Institute of Occupational Safety and Health; and
- (5) the Social Security Organisation.

The Ministry also services the following five councils:

- (1) the National Labour Advisory Council;
- (2) the National Occupational Safety and Health Council;
- (3) the Human Resources Development Council;
- (4) the National Vocational Training Council; and
- (5) Wages Councils (where established).

## STRUCTURE OF THE MINISTRY OF HUMAN RESOURCES



‘The *divisions* constitute the secretariat of the Ministry, the *departments* execute its most important function, viz. the enforcement of various laws and regulations.’

## **B. Organisations/Institutions for dispute resolution**

The Ministry of Human Resource administers a broad range of legislation pertaining to diverse fields, which covers trade union, industrial relations, employment, occupational safety and health and social security. However, from the standpoint of specialised institutions created for dispute settlement, there are only two (2) – the “Labour Court”, created under the Employment Act, 1955, and the Industrial Court established under the Industrial Relations Act, 1967.

### **1. The “Labour Court”**

The “Labour Court” is actually not a “court” at all in the usual sense in which that word is understood, but represents a quasi-judicial proceeding of the Director General of Labour. Section 69 of the Employment Act 1955 authorises the Director General of Labour to inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under –

- (a) any term of the contract of service between such employee and his employer;
- (b) any of the provisions of the Act or any subsidiary legislation made thereunder, or
- (c) the provisions of the Wages Council Act 1947 or any order made thereunder.

In pursuance of the Director General’s inquiry, he is empowered to make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof. The Director General’s order for the payment of money carries interest at the rate of 8% per annum.

### **Procedure in Director General’s Inquiry**

- (a) The person complaining shall present to the Director General a written statement of his complaint and of the remedy which he seeks or he shall in person make a statement to the Director General of his complaint and of the remedy which he seeks.
- (b) The Director General shall, as soon as practicable, examine the complainant on oath or affirmation and shall record the substance of the complainant’s statement in a case book.

- (c) the Director General may make such inquiry as he deems necessary to satisfy himself that the complaint discloses matters which, in his opinion ought to be inquired into, and may summon in the prescribed form the person complained against.
- (d) When issuing a summons to a person complained against the Director General shall give such person notice of the nature of the complaint made against him and the name of the complainant and shall inform him of the date, time and place at which he is required to attend and shall inform him that he may bring with him any witnesses he may wish to call on his behalf, and that he may apply to the Director General for summonses to such persons to appear as witnesses on his behalf;
- (e) when the Director General issues a summons to a person complained against he shall inform the complainant of the date, time and place mentioned therein and shall instruct the complainant to bring with him any witnesses he may wish to call on his behalf and may, on the request of the complainant and subject to any conditions as he may deem fit to impose, issue summonses to such witnesses to appear on behalf of the complainant;
- (f) when at any time before or during an inquiry the Director General has reason to believe that there are any persons whose financial interests are likely to be affected by such decision as he may give on completion of the inquiry or who he has reason to believe have knowledge of the matters in issue or can give any evidence relevant thereto he may summon any or all of such persons;
- (g) the Director General shall, at the time and place appointed, examine on oath or affirmation those persons summoned or otherwise present whose evidence he deems material to the matters in issue and shall then give his decision on the matters in issue;
- (h) if the person complained against or any person whose financial interests the Director General has reason to believe are likely to be affected and who has been duly summoned to attend at the time and place appointed in the summons shall fail so to attend the Director General may hear and decide the complaint in the absence of such person notwithstanding that the interests of such person may be prejudicially affected by his decision;
- (i) in order to enable a court to enforce the decision of the Director General, the Director General shall embody his decision in an order in such form as may be prescribed.

Where the Director General has made an order and it has not been complied with, he may send a copy of the order to the Registrar of a Sessions Court or to the court of a First Class Magistrate, and the said Registrar or court shall cause the copy of the order to



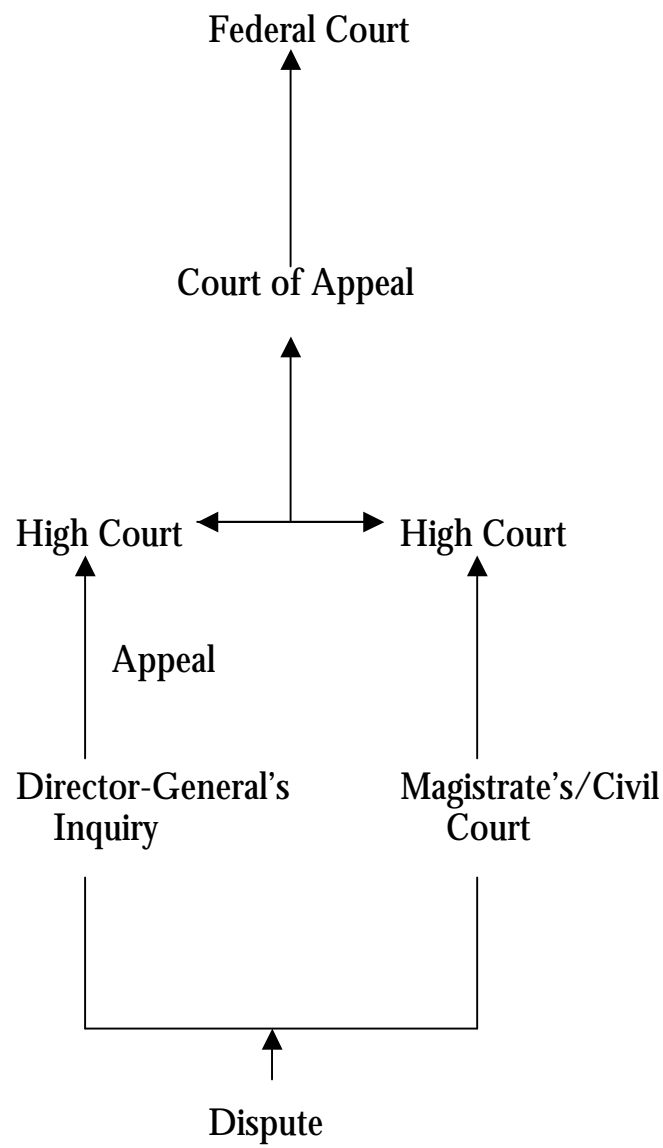
be recorded, and thereupon the said order shall for all purposes be enforceable as a judgment of the Sessions Court or of the Court of the First Class Magistrate.

The Director General may, if he thinks fit, submit any question of law for the decision of a Judge of the High Court, and if he does so, he shall decide the proceedings in conformity with such decision.

Any person whose financial interests are affected is dissatisfied with the decision or order of the Director General, he may appeal to the High Court.

The Act does not prevent any employer or employee from enforcing his civil rights and remedies for any breach or non-performance of a contract of service by any suit in court in any case in which proceedings have not been instituted before the Director General under section 69 or, if instituted, have been withdrawn.

A complaint by an employee that he has reasonable grounds for believing that his employer, in order to evade payment of his wages, is about to abscond, is to be made to a *Magistrate* under section 78(1) of the Act, and not to the Director General. The Magistrate may then summon such employer and direct him to show cause why he should not be required to give security by bond to remain in Malaysia until such wages are paid.



Possible institutional routes in cases of Labour disputes *except* industrial or trade disputes and disputes pertaining to dismissal

**Table 3**  
**Cases Heard and Amounts Ordered By**  
**The 'Labour Court' : 1990-1992**

<b>Labour Court Cases</b>	<b>Year</b>		
	<b>1990</b>	<b>1991</b>	<b>1992</b>
Number of Cases Heard	4,911	4,572	5,106
Number of Employees Involved	5,997	5,531	6,114
Amount Ordered to be Paid (ringgit)	5.0 m	5.3 m	6.4 m
Amount Paid by Employers (ringgit)	3.8 m	3.9 m	5.1m

*Source:* Department of Labour, Peninsular Malaysia

**Table 4**  
**Charges Preferred and Persons Prosecuted**  
**Under the Employment Act: 1990-1992**

<b>Law Court Cases</b>	<b>Year</b>		
	<b>1990</b>	<b>1991</b>	<b>1992</b>
Number of Charges Preferred in Court	216	180	146
Number of Conviction on Charges	202	158	123
Number of Acquittals on Charges	14	22	23
Number of Persons Prosecuted in Court	254	234	216
Number Successfully Prosecuted	242	207	165
Number Unsuccessfully Prosecuted	12	27	51
Amount of Fines Paid (Ringgit)	73,236	23,332	49, 370

*Source:* Department of Labour, Peninsular Malaysia.

**Table 5****Peninsular Malaysia: Number of Claims, Decisions and Amount Granted by the Labour Court, 1994-1998**

<b>Year</b>	<b>Claims</b>			<b>Decision</b>			<b>Amount of Claims (RM)</b>		
	<b>From Employer</b>	<b>From Employee</b>	<b>Total</b>	<b>In Favour of Employer</b>	<b>In Favour of Employee</b>	<b>Total</b>	<b>From Employer</b>	<b>From Employee</b>	<b>Total</b>
1994	76	9,316	9,392	76	5,669	5,745	7,411	5,746,139	5,753,550
1995	319	11,172	11,491	319	5,574	5,893	163,687	7,686,843	7,850,530
1996	257	10,876	11,133	257	5,508	5,765	116,996	8,650,185	8,767,181
1997	228	12,742	12,970	467	5,980	6,447	137,808	14,152,426	14,290,234
1998	781	10,057	10,838	705	8,539	9,244	140,774	25,201,471	25,342,245

*Source:* Labour Department Peninsular Malaysia, Ministry of Human Resources.

**Table 6****Sabah: Number of Complaints Reported and Settled by the Labour Department and Amount Paid, 1994-1998**

<b>Year</b>	<b>Number of Complaints Reported</b>	<b>Number of Complaints Settled</b>	<b>Amount Paid (RM)</b>
1994	1,079	873	478,174
1995	968	773	453,040
1996	899	832	364,696
1997	1,546	1,401	684,954
1998	2,291	2,165	1,135,468

*Source:* Labour Department Sabah, Ministry of Human Resources

**Table 7**

**Sarawak: Number of Complaints Reported and Settled by the Labour Department and Amount Paid, 1994-1998**

<b>Year</b>	<b>Number of Complaints Reported</b>	<b>Number of Complaints Settled</b>	<b>Amount Paid (RM)</b>
1994	1,945	1,546	497,681
1995	1,328	902	741,701
1996	1,406	869	452,457
1997	1,456	914	579,697
1998	2,731	1,886	1,255,830

*Source:* Labour Department Sarawak, Ministry of Human Resources

## **Limitations upon the Director General's Inquiry**

The Director General's inquiry is limited to disputes between employees and employers governed by the Employment Act, 1955. An "employee" under the Act is specified under the First Schedule thereto, ie:

### **Employee**

1. Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed one thousand five hundred ringgit a month.

2. Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which –

(1) he is engaged in manual labour including such labour as an artisan or apprentice:

Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one-half of the total time during which he is required to work in such wage period;

(2) he is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;

(3) he supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work;

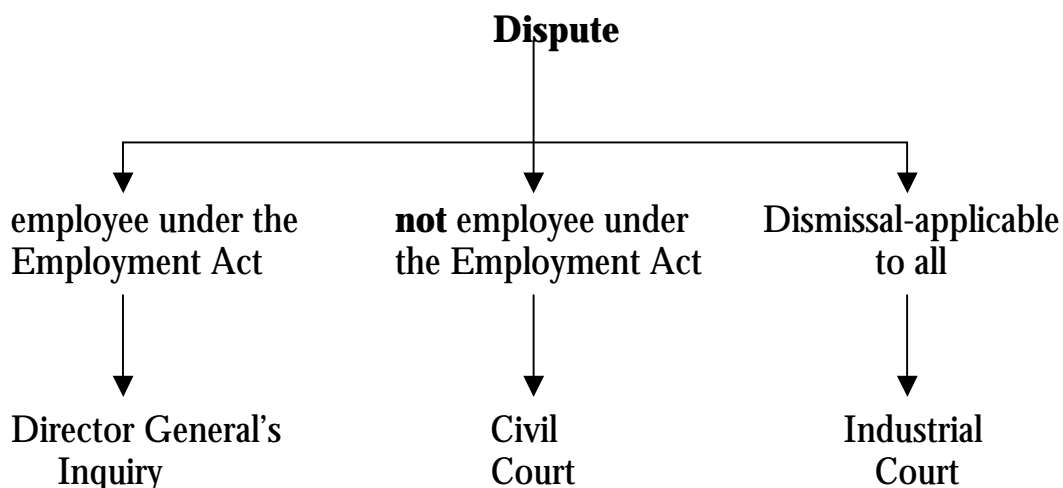
(4) he is engaged in any capacity in any vessel registered in Malaysia and who

–

- (a) is not an officer certified under the Merchant Shipping Acts of the United Kingdom as amended from time to time;
  - (b) is not the holder of a local certificate as defined in Part VII of the Merchant Shipping Ordinance, 1952; or
  - (c) has not entered into an agreement under Part III of the Merchant Shipping Ordinance, 1952; or
- (5) he is engaged as a domestic servant.

Employees who do not fulfil the criteria under the First Schedule cannot utilise the proceedings under the Act. For contract breaches and other problems pertaining to employment, they would have to resort to litigation in the civil courts. The only exception is if they have been dismissed or have their contracts of employment terminated, they may resort to the procedure under the Industrial Relations Act, 1967. Section 69A of the Employment Act 1955 itself makes it clear that the Director General has no jurisdiction to inquire into, hear, decide or make an order in respect of any claim, dispute or purported dispute which, in accordance with the Industrial Relations Act 1967 –

- (a) is pending in any inquiry or proceedings under the Act;
- (b) has been decided upon by the Minister under section 20(3) of the Act, or
- (c) has been referred to or is pending in any proceedings before the Industrial Court.



## 2. The Industrial Court

The preamble to the Industrial Relations Act 1967 (IRA) states as its objectives, the regulation of relations between employers and workmen and their trade unions, and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom.

A “trade dispute” refers to any dispute between an employer and his workman which is connected with the employment or non-employment or the terms of employment or the conditions of work of any such workman.

A “workman” refers to any person, including an apprentice, employed by an employer under a contract of employment to work for hire or reward and for the purposes of any proceedings in relation to a trade dispute includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute.

The IRA establishes an Industrial Court consisting of a President appointed by the *Yang di Pertuan Agong* (Head of State) and a panel of persons representing employers and a panel of persons representing workmen, all of whom are to be appointed by the Minister.

In any proceedings before the Court a party may –

- (a) where the party is a trade union, be represented by an officer or employee of the union;
- (b) where the party is an employer, appear himself personally or be represented by his duly authorised employee or by an officer or employee of a trade union of employers of which he is a member;
- (c) where the party is a workman, appear himself personally or where he is a member of a trade union, be represented by an officer or employee of the trade union.
- (d) where the a party is a trade union, or an employer or a workman, be represented with the permission of the President or the Chairman, *by an advocate*, or, by any workman registered in Malaysia.

In any proceedings before it, the Court has the following powers:



- (a) to order that any party be joined, substituted or struck off;
- (b) to summon before it the parties to any such proceedings and any other person who in its opinion is connected with the proceedings;
- (c) to take evidence on oath or affirmation and compel the production before it of books, documents and things;
- (d) to hear and determine the matter before it notwithstanding the failure of any party to submit any written statement whether of case or reply to the court;
- (e) to conduct its proceedings or any part thereof in private;
- (f) after consultation with the Minister, to call in aid one or more experts, and
- (g) to generally direct and do all such things as are necessary or expedient for the expeditious determination of the matter before it.

Where the court is not unanimous on any question or matter, a decision shall be taken by a majority of members, and if there is no majority decision, by the President or Chairman.

The Court is to make its award without delay, and where practicable, *within 30 days* from the date of reference to it of the trade dispute.

In the event of an agreement being reached during the proceedings before the court, the court in making its award, may have regard to the terms of the agreement. In the event of an agreement being reached before the court commences its proceedings, the court may be constituted by the President or Chairman sitting alone for the purpose of recording the terms of the agreement.

Although an award has been made, the court may, in its discretion, on the application of any party to the proceedings, refer to the High Court a question of law –

- (a) which arose in the course of the proceedings;
- (b) the determination of which by the court has affected the award;
- (c) which, in the opinion of the court, is of sufficient importance to merit such reference, and
- (d) the determination of which by the court raises, in the opinion of the court, sufficient doubt to merit such reference.

The High Court shall hear and determine the question referred to it as if the reference were an appeal to the High Court against the award of the court, and may consequently confirm, vary, substitute or quash the award or make such other order as it considers just or necessary.

An award, decision or order of the court is to be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed or called in question in any court.

### **Dispute Resolution Process**

There are three (3) main types of dispute which the IRA addresses:

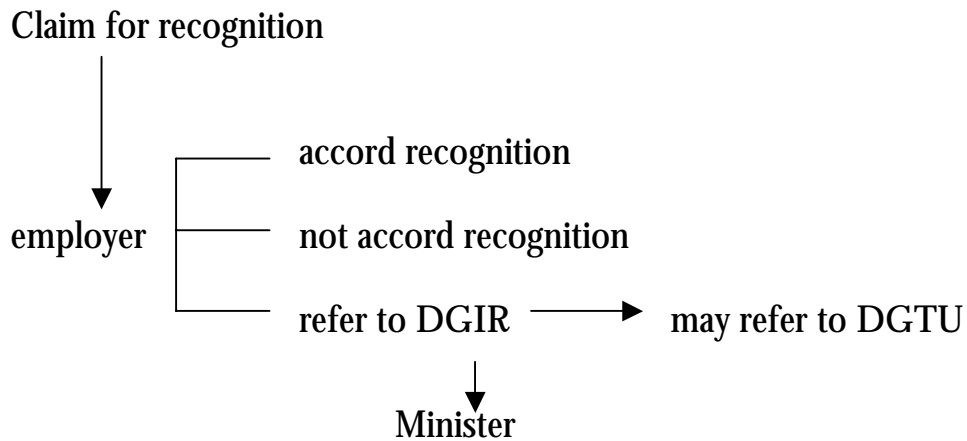
- (a) Recognition disputes;
- (b) Dismissals; and
- (c) Trade disputes generally.

#### **(a) *Recognition disputes***

Before a trade union may begin collective bargaining with an employer, the union must first be “recognised” by the employer concerned. A trade union of workmen may serve on an employer in writing in the prescribed form a claim for recognition in respect of the workmen or any class of workmen employed by such employer.

An employee upon whom a claim for recognition has been served must, within 21 days after the service of the claim, either accord recognition, not accord recognition or apply to the Director General of Industrial Relations to ascertain whether the workmen in respect of whom recognition is being sought are members of the trade union of workmen concerned. For the purposes of carrying out his function in this regard, the Director General of Industrial Relations (DGIR) may refer to the Director General of Trade Unions (DGTU) for his decision any question on the competence of the trade union concerned to represent any workmen or class of workmen.

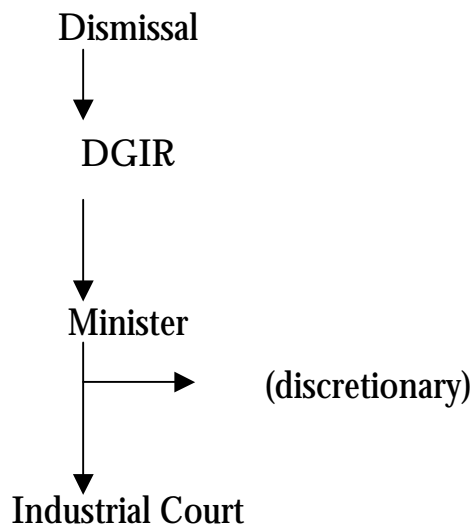
Where the matter remains unresolved, the DGIR is to notify the Minister. The Minister then shall decide the matter. The Minister’s decision is to be final and not open to question in any court.



**(b) Dismissals**

Where a workman, irrespective of whether he is a member of a trade union or not, considers that he has been dismissed without just cause or excuse, he may make representations in writing to the DGIR to be reinstated in his former employment. Such representations are to be made within *60 days* of the dismissal.

Upon receipt of the representations the DGIR is to take such steps as he may consider necessary or expedient to settle the dispute. If there is no likelihood of the dispute being settled, the DGIR must notify the Minister. Upon receiving the notification of the DGIR, the Minister may, if he thinks fit, refer the representations to the Industrial Court for an award.



**(c) Trade Disputes**

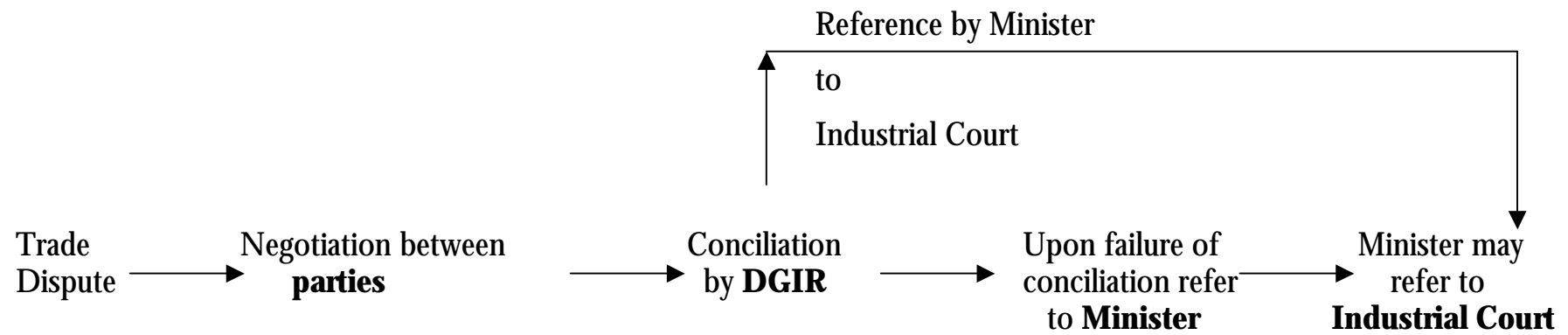
Where a trade dispute exists or is apprehended which is not likely to be settled by negotiation between the parties, the DGIR may take such steps as may be necessary for

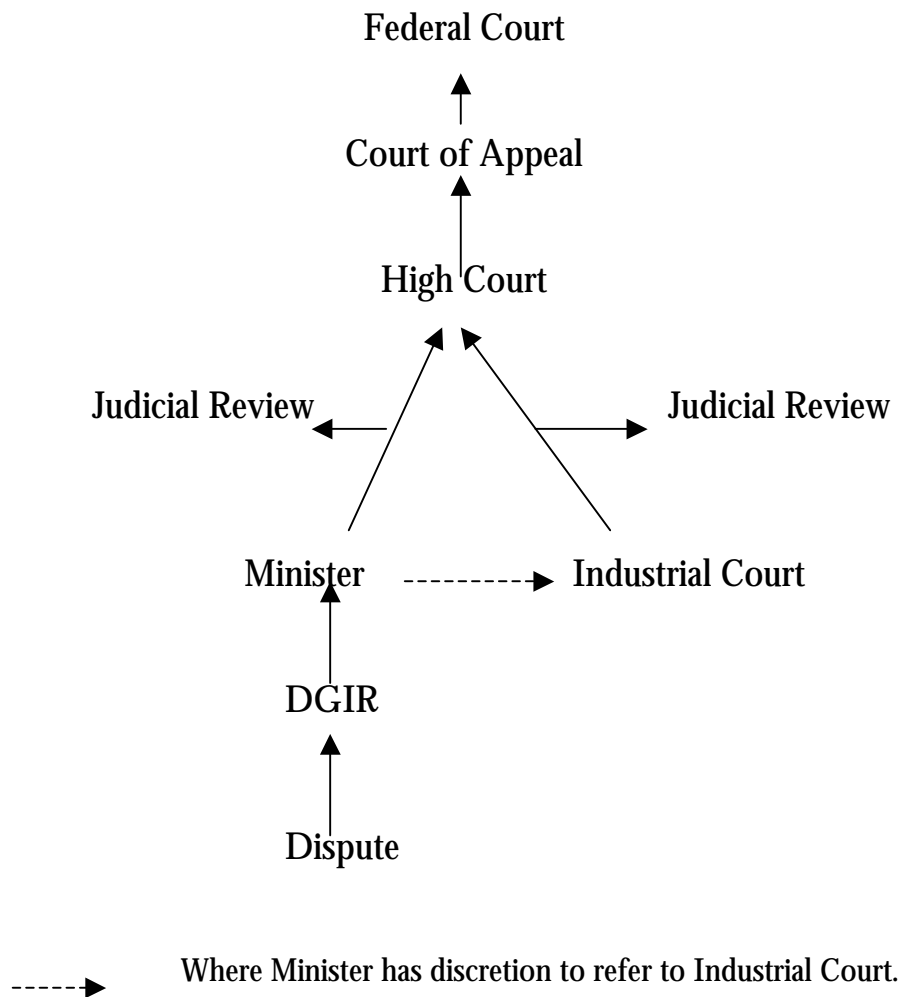
promoting an expeditious settlement of the dispute. If the DGIR is satisfied that there is no likelihood of the trade dispute being settled, he is to notify the Minister. Notwithstanding the above, the Minister may, at any time, if he considers it necessary or expedient, take such steps as may be necessary to conciliate in any trade dispute. If the dispute is not otherwise resolved, the Minister may refer the dispute to the Industrial Court on the joint request in writing by the trade union of workmen and the employer who are parties to the dispute. This power of the Minister to refer any trade dispute to the Court may be exercised without the need for the conciliation process to be concluded [section 26(2) IRA].

Although the IRA declares that the Minister's decision in a recognition dispute shall be final and not open to question in any court, and the Industrial Court's decisions are final and not open for review by any civil court, the development of the doctrine of judicial review by the civil courts has meant that the "finality" provisions actually mean little in practice.. The Malaysian judiciary has adopted a pro-active and interventionist approach in judicial review. For example, in *R. Ramachandran v The Industrial Court*,<sup>16</sup> the Federal Court decided that in the exercise of judicial review, the tribunal's decision may be reviewed for substance as well as process, and that should the decision be found to be wrong, the court had the power to mould the appropriate relief and award it to the party concerned instead of remitting the case back to the tribunal for a re-hearing. As a result, although there exist specialised tribunals such as the Industrial Court established for the resolution of trade disputes, the dispute resolution process is not isolated from civil court litigation. In fact, due to the developments in the law pertaining to judicial review, dispute resolution eventually finds its way to the civil courts.

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<sup>16</sup> [1977] 1 MLJ 145.





### **Summary of dispute resolution process in Trade Disputes**

**Table 8**

**Malaysia: Outcome of Claims for Recognition by Trade Unions Handled by the Industrial Relations Department (IR)  
by Sector and Mode of Settlement, 1994-1998**

Sector	Mode of Settlement														
	Recognition Accorded Voluntarily					Recognition Accorded by Decision of Minister					Recognition Rejected/Withdrawn/ Not Eligible				
	1994	1995	1996	1997	1998	1994	1995	1996	1997	1998	1994	1995	1996	1997	1998
Agriculture, Forestry, Livestock and Fishing	1	-	-	3	3	-	-	-	3	1	3	-	1	1	1
Mining and Quarrying	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Manufacturing	11	7	14	19	7	1	4	8	8	12	4	16	12	25	12
Electricity, Gas and Water	-	-	-	2	2	-	-	-	1	-	-	-	-	1	2
Construction	-	-	-	1	-	-	-	1	-	-	-	-	1	1	1
Wholesale and Retail Trade, Restaurants and Hotels					6				2						4
Finance, Insurance, Real Estate and Business Services	9*	6*	12*	13*	8	2*	0*	1*	4*	-	5*	2*	7*	11*	6
Community, Social and Personal Services					-				2						10
Transport, Storage and Communication	2	3	1	7	3	-	-	-	4	4	2	2	2	3	-
Others	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	23	16	27	45	29	3	4	10	20	21	14	20	23	42	36

*Source:* Industrial Relations Department, Ministry of Human Resources.

\* Figures for the years 1994-1997 are inclusive of wholesale and retail trade, restaurants and hotels, finance, insurance, real estate and business services, community, social and personal sectors.

**Table 9****Malaysia: Settlement of Claims for Reinstatement by the Industrial Relations Department (IR), 1994-1998**

<b>Settlement</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>
1. Settled Through Conciliation					
a) Reinstatement	221	282	358	270	396
b) Payment of Compensation	1,103	1,207	1,116	1,231	3,085
Amount (RM)	4,483,906	6,260,687	5,411,127	6,796,345	22,428,575
c) Case withdrawn	649	492	498	559	1,346
d) Case Closed (Absent)	-	-	-	-	176
2. Decision of the Minister					
a) Reference to Industrial Court	458	596	393	713	886
b) No Merit for Reference to Industrial Court	452	217	1,043	87	778
Total	2,883	2,794	3,408	2,860	6,667

*Source:* Industrial Relations Department, Ministry of Human Resources.



**Table 10**  
**Malaysia: Type of Cases Arbitrated by the Industrial Court, 1994-1998**

<b>Type of Case</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>
Termination Cases					
Constructive	15	26	19	34	58
Misconduct	439	410	366	407	403
Retrenchment	9	4	50	14	17
Non-Termination Cases					
Non-Compliance of Award	15	41	67	60	69
Non-Compliance of Collective Agreement	12	14	16	30	42
Interpretation of Award/Collective Agreement	10	12	10	5	28
Variation of Award/Collective Agreement	7	3	1	2	12
Amendments to Collective Agreement (By Court Order)	-	-	-	-	-
Collective Agreement (Terms and Conditions)	48	30	57	49	26
Questions of Law	14	9	10	9	5
Victimisation	-	-	1	1	4
<b>Total</b>	<b>569</b>	<b>549</b>	<b>597</b>	<b>611</b>	<b>664</b>

*Source:* Industrial Relations Department, Ministry of Human Resources.

**Table 11**  
**Cases Referred and Settled 1999 and 2000**

<b>Case</b>	<b>1999</b>	<b>2000</b>	<b>%</b>
Cases brought forward from previous year	972	1,292	32.92
Cases referred in current year	1,072	1,003	-2.34
Cases settled	707	701	-0.85
Cases carried forward	1,292	1,594	23.38

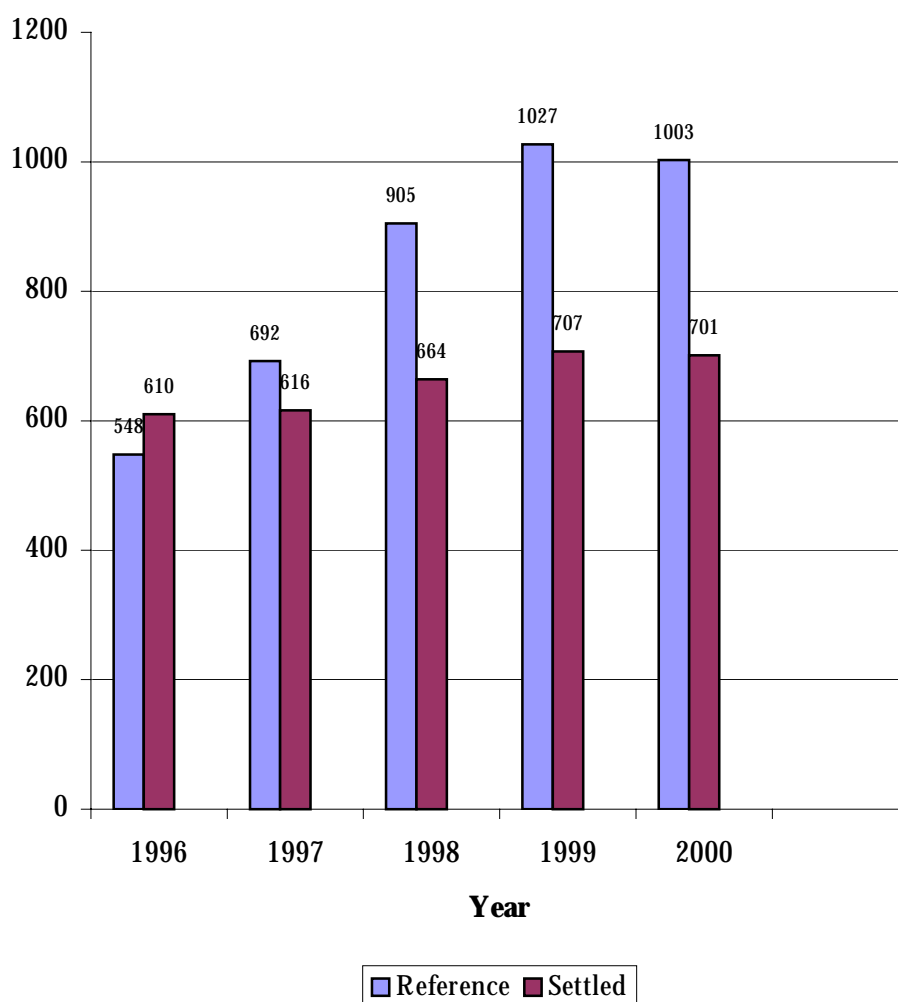
*Source:* Ministry of Human Resources, Annual Report 2000

**Table 12****Non-Dismissal Cases 1999 and 2000**

<b>Case</b>	<b>1999</b>	<b>2000</b>	<b>%</b>
Non-compliance with court decision	73	70	-4.11
Non-compliance with collective agreement	80	54	-32.50
Interpretation of court award and collective agreement	6	7	16.67
Variation of court award and collective agreement	6	5	-16.67
Amendments to collective agreement on court order	1	-	-100.00
Collective agreement (Terms and Conditions)	26	42	61.54
Question of law	12	6	-50
<b>Total</b>	<b>204</b>	<b>184</b>	<b>-9.80</b>

*Source:* Ministry of Human Resources, Annual Report 2000.

**Chart 1**  
**No. of references and Cases Settled 1996-2000**



*Source:* Ministry of Human Resources, Annual Report 2000.

In the above mentioned main types of disputes, that is, dismissals and trade disputes generally, the Industrial Court's jurisdiction to hear the dispute is exercised upon the *reference* of such dispute to the Court by the Minister. In the case of recognition disputes, the Industrial Court does not have jurisdiction as the dispute is supposed to be “finally” settled by the Minister.

There are a few cases where parties may bring their dispute *directly* to the Industrial Court, that is:

- (a) under section 33(1) of the IRA, if any question arises as to the interpretation of any award or collective agreement taken cognizance of by the court, the Minister may refer the question, or *any party bound by the award or agreement may apply*, to the court for a decision on the question; and
- (b) under section 56(1) IRA, any complaint that any term of any award or of any collective agreement which has been taken cognizance of by the Court has not been complied with may be lodged with the court in writing by any trade union or person bound by such award or agreement.

### **3. Industrial Injury (Workmens' Compensation) – The Social Security Organisation**

The Social Security Organisation (SOCSO) was formed as a government department on January 1, 1971 to enforce the Employees' Social Security Act, 1969. It became a statutory authority with effect from July 1, 1985.

SOCSCO administers social security schemes which provide protection for workers against several contingencies, namely employment injury including commuting accidents, occupational diseases, invalidity and death. The objective of the social security scheme is to guarantee timely and adequate benefit payments to the worker and his dependants in the event of a contingency. SOCSO also provides medical care, physical and vocational rehabilitation besides promoting accident prevention measures and safety at the work place.

SOCSCO ensures the success of its mission based on the following:<sup>17</sup>

- Developing staff training programmes on health and accident prevention measures.

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<sup>17</sup> SOCSO, Annual Report, 1999.

- Instilling the relevant social values necessary to control the action of an individual, which may jeopardise his personal health and safety.
- Constantly keeping abreast of changing safety standards, health care trends and techniques.
- Regular inspection of office equipment to identify and correct irregularities from the health and safety perspective.
- Reviewing plans for new location including the facilities for the office to guarantee the designing, construction, installation and operation are within the stipulated government guidelines.
- Management's commitment to ensure every person in the organisation understands and accepts that he has a role and responsibility towards his safety and health as well as that of his surroundings.

In order to ensure that the organisation's objectives will be met, SOCSO has drawn up its client's charter:<sup>18</sup>

- To pay temporary disablement benefit (first payment) to injured employees within a month.
- To pay permanent disablement benefit (first payment) and constant attendance allowance to all injured employees within 3 months.
- To pay dependant's benefit (first payment) to dependants within 3 months.
- To pay invalidity pension(first payment) or invalidity grant and constant attendance allowance to employees who qualify within a period of 3 months.
- To pay survivor's pension(first payment) to dependants within a period of 3 months.
- To pay funeral benefits to eligible dependants of deceased persons within 15 days.
- To register new employers and employees and inform employer of their code number and employee social security registration number within one (1) month.
- To investigate and provide information on every complaint regarding benefit claims within 2 weeks.

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<sup>18</sup> 1999, Annual Report.

**Table 14**  
**Registration of Employers and Employees**

<b>Activity</b>	<b>1995</b>	<b>%</b>	<b>1996</b>	<b>%</b>	<b>1997</b>	<b>%</b>	<b>1998</b>	<b>%</b>	<b>1999</b>	<b>%</b>
Employer registered	274,017	13.6	305,500	11.5	338,794	10.9	358,543	5.8	385,916	7.6
Employee registered	7,422,191	6.8	7,613,635	2.6	8,252,680	8.4	8,428,589	2.1	8,598,005	2.0
Active Employer	175,455	18.5	210,059	19.7	227,112	8.1	230,027	1.3	239,674	4.2
Active Employee	3,874,691	11.3	4,098,418	5.8	4,183,343	2.1	4,327,254	3.4	4,454,586	2.9

Active is defined where one or more contribution is made in that year.

## **Social Security Schemes**

SOCSO provides 2 social insurance schemes:

### **(a) *Employment Injury Insurance Scheme***

This Scheme provides protection to an employee against industrial accidents that occur at work or while traveling on a route between his residence and his place of work or between his place of work to a place where he takes his meal during an authorised recess or during a journey which is directly connected to his employment (so long as the accident does not occur during a stoppage or a deviation from the route). The Scheme also provides protection against occupational diseases.

The employment injury insurance scheme provides the following benefits:

- (i) Temporary Disablement Benefit
- (ii) Permanent Disablement Benefit
- (iii) Dependant's Benefit
- (iv) Constant – attendance allowance
- (v) Funeral Benefit
- (vi) Medical Benefit
- (vii) Rehabilitation Benefit
- (viii) Education Loan Benefit

### **(b) *Invalidity Pension Scheme***

This Scheme provides the employee with a 24-hour coverage in the event of invalidity or death from whatever cause. Under this scheme, the following benefits are provided:

- (i) Invalidity Pension
- (ii) Invalidity Grant
- (iii) Survivor's Pension
- (iv) Constant – attendance allowance
- (v) Funeral Benefit
- (vi) Rehabilitation Benefit
- (vii) Education Loan Benefit.



Every employer employing one or more employee as specified by the Act must register and contribute to SOCSO. The Employment Injury Scheme is currently financed fully through employer's contribution at a rate of 1.25% of employees' monthly wage while Invalidity Pension Scheme is financed through contributions by both employers and employees respectively at a contribution rate of 0.5% of employees' monthly wage.

An employee who earns RM2,000/- or less per month is required to contribute to SOCSO. An employee who has never been registered with or contributed to SOCSO and who is earning more than RM2,000/- monthly is given an option to be covered under the Act with the agreement of his employer. However, once an employee is covered under the Act, he will continue to be covered irrespective of his monthly wage.

**Table 15**  
**Enforcement Activities**

Types of enforcement & service activities	1999		1998	
	Number	%	Number	%
<b>Enforcement</b>				
1. Number of industries inspected based on scheduled inspection				
• Completed	27,939	32.9	34,609	35.0
• In the process	16,048	18.9	20,345	20.6
2. Number of industries visited other than inspected	2,942	3.5	3,945	4.0
<b>Services</b>				
1. Number of cases investigated				
• Certification of Salary and Dependency	12,371	14.5	13,497	13.7
• Employment Injury	10,628	12.5	8,076	8.2
• Invalidity Pension	2,192	2.6	2,103	2.1
• Investigation	3,555	4.2	9,136	9.3
2. Talks	395	0.4	494	0.5
3. Other visits	8,972	10.5	6,556	6.6
<b>Total</b>	<b>85,042</b>	<b>100</b>	<b>98,761</b>	<b>100</b>

*Source: SOCSO Annual Report 1999.*

**Social Security Appellate Board:**

The Social Security Appellate Board is the highest appeal channel for any party under the Employees Social Security Act 1969. A total of 5 Appellate Boards have been established, 3 in Peninsular Malaysia and one each in Sabah and Sarawak. The number of appeal cases received in 1999 totalled 286 as compared to 320 in 1998. The total number of cases settled was 189, an increase of 7 cases when compared to 182 cases in 1998. Until December 1999, 313 cases were not settled by the Boards. Of this, 191 cases were awaiting a date for hearing, 83 cases awaiting compilation of the appellants' records by SOCSO, and 39 cases awaiting the written decision of the respective Boards.

**Table 16**  
**Status of SSAB Appeal Cases, 1999**

<b>Social Security Appellate Board (SSAB) – Status of Appeal Cases</b>	<b>Peninsular Malaysia</b>	<b>Sabah</b>	<b>Sarawak</b>	<b>Total</b>
Number of New Appeal Cases Received/ Reported in 1999	269	0	17	286
Number of Cases Filed As At 31.12.99	259	1	18	278
Number of Appeal Cases Heard in 1999	636	7	21	664
Number of Appeal Cases Reviewed and Withdrawn 1999	37	0	1	38
Number of Appeal Cases Decided in 1999	176	0	13	189
Number of Appeal Cases Not Settled As At 31.12.99				
i) Awaiting SSAB Decision	39	0	0	39
ii) Awaiting Hearing/SSAB Hearing Date	186	1	4	191
iii) Awaiting Preparation Of Appeal Records By SOCSO	78	0	5	83
<b>Total</b>	<b>303</b>	<b>1</b>	<b>9</b>	<b>313</b>

*Source:* SOCSO Annual Report, 1999.

**Table 17**  
**Prosecution Cases By Type of Offence**

<b>No.</b>	<b>Type of Offence</b>	<b>Total Case</b>	<b>Fined By Court (RM)</b>	<b>Back Dated Contribution (RM)</b>
1.	Failed to make contribution	172	229,920	1,715,799
2.	Failed to register company	20	11,300	-
3.	Failed to report accident	11	17,800	-
4.	Failed to submit contribution Schedule	4	400	-
5.	Failed to register employee	5	20,900	-
<b>Total</b>		212	280,320	1,715.799

*Source:* SOCSO Annual Report, 1999

**Table 18**  
**Types of offences under Employees Social Security Act,**  
**1999 and 2000**

Types of offences prosecuted	1999		2000	
	Total	% Settled	Total	% Settled
Failure to make contribution	172	81.1	103	77.4
Failure to report accident	11	5.2	13	9.8
Failure to register company	20	9.4	9	6.8
Failure to register employee	5	2.4	2	1.5
Failure to submit contribution schedule	4	1.9	1	0.75
Failure to pay interest on late contribution payments	-	-	5	3.75
<b>Total Settled</b>	<b>212</b>	<b>100</b>	<b>133</b>	<b>100</b>

*Source:* Ministry of Human Resources Annual Report 2000.

**Table 19**  
**Prosecution Cases Settled By Type of Offence and Local Office**

No	Local Office	Failed To Make Contribution (RM)		Failed to Register the Industry	Failed to Report Accidents	Failed to Register Employees	Failed to Maintain Register of Employees	Total
1	Kuala Lumpur	64	843,277.75	5	-	-	-	69
2	Johor Bahru	22	331,016.85	1	-	-	-	23
3	Petaling Jaya	32	232,703.00	2	2	-	-	36
4	Ipoh	15	106,207.40	2	-	-	3	20
5	Seremban	4	88,809.20	-	-	-	-	4
6	Segamat	3	33,501.50	-	1	1	-	5
7	Butterworth	2	329.00	-	-	-	-	2
8	Kuantan	2	15,510.70	-	2	-	-	4
9	Sg Petani	5	12,909.20	1	-	-	-	6
10	Taiping	5	11,525.00	6	1	1	-	13
11	Sarikei	2	5,231.00	-	-	-	-	2
12	Kuching	1	4,209.40	-	-	-	-	1
13	Alor Setar	4	4,890.00	-	-	-	-	4
14	Kota Bharu	4	4,219.50	-	-	-	-	4
15	Kuala Kangsar	1	1,441.50	-	-	-	-	1
16	Kuala Krai	1	1,126.10	-	1	-	-	2
17	Tawau	1	659.20	-	-	-	-	1
18	Kangar	1	342.10	-	-	-	-	1
19	Klang	2		3	4	-	-	9
20	Kemaman	-		-	-	2	-	2
21	Tapah	-		-	-	1	-	1
22	Pulau Pinang	-		-	-	-	1	1
<b>Total</b>		<b>172</b>	<b>1,715,799.20</b>	<b>20</b>	<b>11</b>	<b>5</b>	<b>4</b>	<b>211</b>

*Source:* SOCSO Annual Report, 1999.

The Social Security Appellate Board consists of a Chairman and 2 assessors appointed by the Minister. No civil court shall have jurisdiction to decide or deal with any question or dispute under the Board's jurisdiction or to adjudicate on any liability which, by or under the Act is to be decided by the Board.

Proceedings before the Board are commenced by application, to be made within 3 years from the date on which the cause of action arose. Any application, appearance or act required to be made or done by any person to or before the Board may be made or done by a legal practitioner or by an officer of a registered trade union. The Board may submit any question of law for the decision of the High Court. An appeal lies to the High Court from an order of the appellate board if it involves a substantial question of law.

